SPECIFIC ENFORCEMENT OF A PAROL PROMISE TO CONVEY LAND. — The fact that courts of equity in specifically enforcing many classes of parol promises to convey land assign various and not altogether consistent reasons for so doing, raises the inquiry as to the true underlying principle upon which their jurisdiction is based. Where the transaction regarding conveyance takes the form of a bilateral contract, the mere taking of possession by the promisee with the consent of the promisor is generally regarded as sufficient part performance to take the case out of the Statute of Frauds. *Butcher* v. *Stapely*, 1 Vern. 363. On the other hand, equity will not decree a conveyance where there has been merely a payment of the purchase money. *Britain* v. *Rossiter*, 11 Q. B. D. 123, 131. If in addition to the taking of possession the promisee has made valuable, permanent improvements, he may demand a conveyance. See POMEROY, SPEC. PERF., § 126. The same principles have also been applied, even where the contracts were unilateral. *Freeman* v. *Freeman*, 43 N. Y. 34. It seems hardly exact, however, to use the phrase "part performance" in this last type of case. The same act that operates as an acceptance of the offer cannot logically be regarded as also part performance of the contract; for until the act is done no contract exists.

Another form which the transaction may assume is that of a parol gift. This is illustrated in a recent Oregon case. A father told his son that he might have a certain piece of land if he would move on to it and build. The son, relying on the promise, performed the stipulations and was allowed to enforce a conveyance from his father's grantee, who had taken the land with notice. *Scott* v. *Lewis*, 66 Pac. Rep. 299. The court while citing authorities to sustain the jurisdiction of equity in the case of a parol gift, apparently regarded the original understanding as a contract. In either aspect, however, the result of the decision is amply sustained by authority.

The enforcement of parol gifts shows that the true reason for the rule is not dependent upon any contractual relation; that the theory is not that of the specific performance of contracts. In all the different classes of cases enumerated in which equity has granted relief, with the exception of the first, — viz., where the taking of possession alone was regarded a sufficient part performance to justify a decree — there has existed one common circumstance which probably furnishes the ground for equity jurisdiction. The plaintiff upon the faith of the defendant's promise has entered upon the land of the latter and expended money in improvements, materially changing his position. On the defendant's refusal to convey, the promisee cannot sue on the contract — if it be such a case — because of the statute; and the doctrine of part performance being a purely equitable doctrine, will be of no avail. See POMEROY, SPEC. PERF., § 98. Were he to sue his defaulting promisor in a quasi-contractual action, the measure of his damages would be merely the increment in the value of the land due to his improvements; in most cases an utterly inadequate compensation. Consequently it is eminently just, when the promisee in reliance upon a promise has so changed his position that he can neither be adequately reimbursed nor put in as favorable a position as he occupied before, that equity should then compel a conveyance of the land to him. The cases where the taking of possession is the only act, would seem on principle to fall in the same category as those where only payment of purchase money has been made. The fact that specific enforcement of the promise is granted in the former would seem to be somewhat anomalous.